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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN SLOATMAN, III and
KATHRYN THYNE,

Plaintiff,

v.

USAA SAVINGS BANK, and
DOES 1-10, inclusive, and each of
them,
Defendant.

Case No.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

1. JOHN SLOATMAN, III and KATHRYN THYNE (“Plaintiffs”) bring this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of USAA SAVINGS BANK (“Defendant”), in negligently and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own

1 acts and experiences, and, as to all other matters, upon information and belief,
2 including investigation conducted by his attorneys.

3 2. Additionally, this is an action for damages brought by Plaintiff for
4 Defendant's violations of the Rosenthal Fair Debt Collection Practices Act, Cal.
5 Civ. Code §1788, *et seq.* (hereinafter "RFDCPA") Fair Debt Collection Practices
6 Act, Cal. Civ. Code §1788, *et seq.* (hereinafter "FDCPA"), Consumer Credit
7 Reporting Agencies Act, Cal. Civ. Code §1785, *et seq.* (hereinafter "CAFCRA"),
8 and the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.* (hereinafter
9 "FCRA").

10 3. The TCPA was designed to prevent calls and/or text messages like
11 the ones described herein, and to protect the privacy of citizens like Plaintiffs.
12 "Voluminous consumer complaints about abuses of telephone technology – for
13 example, computerized calls dispatched to private homes – prompted Congress to
14 pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

15 4. In enacting the TCPA, Congress intended to give consumers a choice
16 as to how corporate similar entities may contact them, and made specific findings
17 that "[t]echnologies that might allow consumers to avoid receiving such calls are
18 not universally available, are costly, are unlikely to be enforced, or place an
19 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
20 support of this, Congress found that:

21 [b]anning such automated or prerecorded telephone
22 calls to the home, except when the receiving party
23 consents to receiving the call or when such calls are
24 necessary in an emergency situation affecting the health
25 and safety of the consumer, is the only effective means
26 of protecting telephone consumers from this nuisance
and privacy invasion.

27 Id. at § 12.

28 5. Congress also specifically found that "the evidence presented to the

1 Congress indicates that automated or prerecorded calls are a nuisance and an
 2 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,
 3 *Mims*, 132 S. Ct. at 744.

4 **JURISDICTION AND VENUE**

5 6. This Court has federal question jurisdiction over Plaintiffs’ TCPA
 6 FDCPA, CAFCRA, and FCRA claims because this cause of action arises out of
 7 violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
 8 132 S. Ct. 740 (2012).

9 7. Venue is proper in the United States District Court for the Central
 10 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
 11 Plaintiffs reside within the County of Los Angeles, State of California.

12 **PARTIES**

13 8. Plaintiffs are, and at all times mentioned herein was, a citizen and
 14 resident of the State of California. Plaintiff is, and at all times mentioned herein
 15 was, a “person” as defined by 47 U.S.C. § 153 (10).

16 9. Plaintiffs are informed and believe, and thereon allege, that
 17 Defendant is, and at all times mentioned herein was, company engaged, by use of
 18 the mails or telephone, in the business of collecting a debt from Plaintiffs.
 19 Defendant, is and at all times mentioned herein was a “person,” as defined by 47
 20 U.S.C. § 153 (10). Plaintiffs allege that at all times relevant herein Defendant
 21 conducted business in the State of California and in the County of Los Angeles,
 22 and within this judicial district.

23 10. Plaintiffs are natural persons residing in Los Angeles County in the
 24 state of California, and is a “debtor” as defined by Cal Civ Code §1788.2(h).

25 11. At all relevant times herein, Defendant was a company engaged, by
 26 use of the mails and telephone, in the business of collecting a debt from Plaintiff
 27 which qualifies as a “consumer debt,” as defined by Cal Civ Code §1788.2(f).
 28

1 Defendant, by attempting to collect debts owed, regularly attempts to collect
 2 debts alleged to be due to itself and/or another, and therefore is a “debt collector”
 3 as defined by the RFDCPA, Cal Civ Code §1788.2(c). *See In re Bank of Am.*
 4 *Home Affordable Modification Program (HAMP) Contract Litig.*, No. 10-MD-
 5 02193-RWZ, 2011 WL 2637222, at *6 (D.Mass. July 6, 2011); *cf. Reyes v. Wells*
 6 *Fargo Bank, N.A.*, No. C-10-01667JCS, 2011 WL 30759, at *20 (N.D.Cal. Jan. 3,
 7 2011).

8 **FACTUAL ALLEGATIONS**

9
 10 12. At various and multiple times prior to the filing on the instant
 11 complaint, including within the one year preceding the filing of this Complaint,
 12 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.

13 13. Throughout the early half of 2016, Defendant called Plaintiffs
 14 regarding an alleged debt owed. Defendant called Plaintiff with such frequency
 15 and regularity that it constitutes harassment under the circumstances.

16 14. In one of Defendant’s initial phone calls, Plaintiffs told Defendants
 17 to cease calling and to communicate with them in writing only. Despite this,
 18 Defendants continued to call.

19 15. The calls Defendant placed to Plaintiff’s cellular telephone were
 20 placed via an “automatic telephone dialing system,” (“ATDS”) as defined by
 21 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

22 16. This ATDS has the capacity to store or produce telephone numbers
 23 to be dialed, using a random or sequential number generator.

24 17. The telephone number that Defendant, or its agents, called was
 25 assigned to a cellular telephone service for which Plaintiff incurs a charge for
 26 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

27 18. These calls constituted calls that were not for emergency purposes as
 28 defined by 47 U.S.C. § 227 (b)(1)(A)(i).

1 19. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
2 § 227(b)(1).

3 20. As a result of Defendant's actions, Plaintiffs retained counsel. A
4 notice of representation was sent to Defendant on June 3, 2016. Defendant has
5 failed to respond favorably, if at all, to this letter as of present.

6 21. Further, in or around July 2016, Defendant began reporting
7 derogatory information on Plaintiffs' credit report. Defendants claim that
8 Plaintiffs owe a debt from ten (10) years ago that had in fact been forgiven years
9 ago.

10 22. Plaintiffs submitted disputes to Defendant in or about July 2016
11 relating to the inaccurate reporting concerning their account with Defendant,
12 however, Defendant failed to conduct a reasonable investigation and correct the
13 reporting.

14 23. In or around June 2018, Plaintiffs discovered that despite their
15 multiple disputes, Defendant was still reporting the inaccurate derogatory
16 information.

17 24. Such derogatory information was false, misleading, or incomplete.

18 25. Defendant failed to reasonably reinvestigate and permitted the
19 erroneous derogatory information on Plaintiff's consumer credit report.
20

21 26. This reporting had a severely negative effect on Plaintiffs' credit
22 score.

23 27. Plaintiffs disputed in writing the reporting with Defendant, but
24 Defendant refused to cease furnishing the erroneous information to the credit
25 reporting agencies. Furthermore, Defendant refused to properly validate the
26 information and instead, falsely reported it. As of the time of the filing of this
27 Complaint or within two years, Defendant have continued to report erroneously
28 and derogatorily on Plaintiffs' credit report despite their request for correction.

1 28. Defendant are aware that the third parties to which they are
2 providing this information are going to disseminate this information to various
3 other persons or parties who will be reviewing this information for the purpose of
4 extending credit, insurance or employment and that they have already done so.

5 29. As a result of Defendant' inaccurate reporting of Plaintiffs' accounts,
6 Plaintiffs' credit score decreased. Plaintiffs have and/or will be denied future
7 loans due to the derogatory items placed by Defendant on Plaintiffs' credit report.

8 30. The inaccurate information negatively reflects upon the Plaintiffs,
9 Plaintiffs' credit repayment history, Plaintiffs' financial responsibility as a debtor
10 and Plaintiffs' credit worthiness.

11 31. The credit reports have been and continue to be disseminated to
12 various persons and credit grantors, both known and unknown.

13 32. Plaintiffs have been damaged, and continue to be damaged, in the
14 following ways:

15 a. Emotional distress and mental anguish associated with having
16 incorrect derogatory personal information transmitted about Plaintiff to
17 other people both known and unknown;

18 b. Decreased credit score which may result in inability to obtain credit
19 on future attempts; and

20 c. Out of pocket expenses associated with disputing the information
21 only to find the information to remain on the credit report;

22 33. At all times pertinent hereto, Defendant was acting by and through
23 its agents, servants and/or employees who were acting within the course and
24 scope of their agency or employment, and under the direct supervision and
25 control of Defendant herein.

26 34. At all times pertinent hereto, the conduct of Defendant, as well as
27 that of its agents, servants and/or employees, was malicious, intentional, willful,
28

reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiffs herein.

35. Defendant violated sections 1681n and 1681o of the FCRA by engaging in the following conduct that violates 15 U.S.C. §1681i:

a. Willfully and negligently failing to reinvestigate and properly respond to Plaintiff's dispute such that Defendant disseminated inaccurate and derogatory credit, account and other information concerning the Plaintiff despite knowing that said information was inaccurate

36. Similarly, Defendant violated Cal. Civ. C. § 1785.16 by failing to reasonably reinvestigate and correct the inaccurate and false information on Plaintiffs' credit report after receiving a dispute from Plaintiff.

37. Defendant's conduct was a direct and proximate cause, as well as a substantial factor, in causing the injuries, damages and harm to Plaintiffs that are outlined more fully above, and as a result, Defendant are liable to compensate Plaintiffs for the full amount of statutory, actual and punitive damages, along with attorneys' fees and costs, as well as such other relief permitted by law.

38. As a result of the above violations of the FCRA and CCRA, Plaintiffs suffered and continue to suffer injury to Plaintiffs' feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and Defendant are liable to Plaintiffs for Plaintiffs' actual damages, statutory damages, and costs and attorney's fees.

**FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

39. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

1 40. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple negligent violations of the TCPA, including but not limited to each
3 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

4 41. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
5 seq, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and
6 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

7 42. Plaintiff is also entitled to and seeks injunctive relief prohibiting
8 such conduct in the future.

9
10 **SECOND CAUSE OF ACTION**
11 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
12 **TELEPHONE CONSUMER PROTECTION ACT**
13 **47 U.S.C. § 227 ET SEQ.**

14 43. Plaintiffs incorporate by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.

16 44. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple knowing and/or willful violations of the TCPA, including but not
18 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
19 seq.

20 45. As a result of Defendant's knowing and/or willful violations of 47
21 U.S.C. § 227 et seq, Plaintiffs are entitled to an award of \$1,500.00 in statutory
22 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

23 46. Plaintiffs are also entitled to and seeks injunctive relief prohibiting
24 such conduct in the future.

25 **THIRD CAUSE OF ACTION**
26 **VIOLATION OF ROSENTHAL FAIR DEBT COLLECTION PRACTICES**
27 **ACT**

28 47. Plaintiffs reincorporate by reference all of the preceding paragraphs.

1 48. Defendant's conduct constitutes numerous violations of the
2 RFDCPA, including but not limited to:

3 a. Defendant violated the §1788.11(d) of the RFDCPA by causing
4 Plaintiffs' telephone to ring repeatedly or continuously to annoy the person
5 called.

6 Defendant violated the §1788.17 of the RFDCPA by continuously failing
7 to comply with the statutory regulations contained within the FDCPA, 15 U.S.C.
8 § 1692 *et seq.* to wit: Sections 1692d, 1692d(5), 1692c(c).

9 **FOURTH CAUSE OF ACTION**
10 **VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT**

11 49. Plaintiffs reincorporate by reference all of the preceding paragraphs.

12 50. To the extent that Defendant's actions, counted above, violated the
13 RFDCPA, those actions were done knowingly and willfully
14

15 **FIFTH CAUSE OF ACTION:**
16 **VIOLATIONS OF CIVIL CODE §1785 ET SEQ**
17 **(CONSUMER CREDIT REPORTING AGENCIES ACT)**

18 51. Plaintiffs include by reference all of the aforementioned paragraphs
19 as if fully set forth herein.

20 52. To the extent that Defendant' actions, counted above, violated the
21 CCRA, those actions were done knowingly and willfully.

22 53. Based on these violations of Civil Code § 1785.16, Plaintiffs is
23 entitled to the remedies afforded by Civil Code § 1785.31, including actual
24 damages, attorney's fees, pain and suffering, injunctive relief, and punitive
25 damages in an amount not less than \$100 nor more than \$5,000, for each violation
26 as the Court deems proper.

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**SIXTH CAUSE OF ACTION
VIOLATIONS OF 15 U.S.C. §1681 ET SEQ
(FAIR CREDIT REPORTING ACT)**

54. Plaintiffs reincorporate by reference all of the preceding paragraphs.

55. Defendant's false and inaccurate reporting of information to consumer credit reporting agencies constitutes one or more violations of 15 U.S.C. §1681, et seq.

56. Despite Plaintiffs' efforts to date, Defendant nonetheless deliberately, willfully, intentionally, recklessly and negligently repeatedly failed to perform reasonable reinvestigations of the above disputes as required by the FCRA, failed to remove the inaccurate information in a timely fashion, failed to note the disputed status of the inaccurate information and continued to report the derogatory inaccurate information about Plaintiffs.

57. Plaintiffs have been damaged, and continue to be damaged, in the following ways:

- a. Denial of credit by at least one lender;
- b. Out of pocket expenses associated with disputing the information only to find the information to remain on the credit report;
- c. Emotional distress and mental anguish associated with having incorrect derogatory personal information transmitted about Plaintiff to other people both known and unknown; and
- d. Decreased credit score which may result in inability to obtain credit on future attempts.

58. At all times pertinent hereto, Defendant was acting by and through its agents, servants and/or employees who were acting within the course and scope of their agency or employment, and under the direct supervision and control of Defendant herein.

59. At all times pertinent hereto, the conduct of Defendant, as well as that of its agents, servants and/or employees, was malicious, intentional, willful,

reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiffs herein.

60. Defendant violated sections 1681n and 1681o of the FCRA by engaging in the following conduct that violates 15 U.S.C. §1681s-2(b):

- a. Willfully and negligently failing to conduct an investigation of the inaccurate information that Plaintiffs disputed;
- b. Willfully and negligently failing to review all relevant information concerning Plaintiffs' account provided to this Defendant;
- c. Willfully and negligently failing to report the inaccurate status of the inaccurate information to all credit reporting agencies;
- d. Willfully and negligently failing to properly participate, investigate and comply with the reinvestigations that were conducted by any and all credit reporting agencies concerning the inaccurate information disputed by Plaintiffs;
- e. Willfully and negligently continuing to furnish and disseminate inaccurate and derogatory credit, account and other information concerning the Plaintiff to credit reporting agencies and other entities despite knowing that said information was inaccurate; and,
- f. Willfully and negligently failing to comply with the requirements imposed on furnishers of information pursuant to 15 U.S.C. §1681s-2.

61. Defendant's conduct was a direct and proximate cause, as well as a substantial factor, in causing the injuries, damages and harm to Plaintiffs that are outlined more fully above, and as a result, Defendant is liable to compensate Plaintiffs for the full amount of statutory, actual and punitive damages, along with attorneys' fees and costs, as well as such other relief permitted by law.

62. Further, Defendant failed to notify Plaintiffs of their intention to report negative information on their credit reports. Defendant then failed to

1 correct the disputed information within thirty days of Plaintiffs' dispute of that
2 information.

3 63. As a result of the above violations of the FCRA, Plaintiffs suffered
4 and continue to suffer injury to Plaintiffs' feelings, personal humiliation,
5 embarrassment, mental anguish and emotional distress, and Defendant is liable to
6 Plaintiffs for Plaintiffs' actual damages, statutory damages, and costs and
7 attorney's fees.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs the
10 following relief against Defendant:

11 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE** 12 **TCPA, 47 U.S.C. § 227 ET SEQ.**

- 13
- 14 • As a result of Defendant's negligent violations of 47 U.S.C. §
15 227(b)(1), Plaintiffs seek \$500.00 in statutory damages, for each and
16 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - 17 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
18 such conduct in the future.
 - 19 • Any other relief the Court may deem just and proper.

20 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL** 21 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 22
- 23 • As a result of Defendant's knowing and/or willful violations of 47
24 U.S.C. § 227(b)(1), Plaintiffs seek \$1,500.00 in statutory damages,
25 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).
 - 26 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
27 such conduct in the future.
 - 28 • Any other relief the Court may deem just and proper.

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1 **THIRD CAUSE OF ACTION**
2 **VIOLATION OF ROSENTHAL FAIR DEBT COLLECTION PRACTICES**
3 **ACT**

- 4 • Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt
5 Collection Practices Act, Cal. Civ. Code §1788.30(b),
6 • Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair
7 Debt Collection Practices Act, Cal. Civ Code § 1788.30(c), and
8 • Any other relief that this Honorable Court deems appropriate.

9 **FOURTH CAUSE OF ACTION**
10 **VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT**

- 11 • Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt
12 Collection Practices Act, Cal. Civ. Code §1788.30(b),
13 • Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair
14 Debt Collection Practices Act, Cal. Civ Code § 1788.30(c), and
15 • Any other relief that this Honorable Court deems appropriate.

16 **FIFTH CAUSE OF ACTION:**
17 **VIOLATIONS OF CIVIL CODE §1785 ET SEQ**
18 **(CONSUMER CREDIT REPORTING AGENCIES ACT)**

19 WHEREFORE, Plaintiffs respectfully pray that judgment be entered
20 against the Defendant for the following:

- 21 A. Actual damages;
22 B. Punitive damages not to exceed \$5,000.00 per violation;
23 C. Costs and reasonable attorney's fees; and
24 D. For such other and further relief as may be just and proper.

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1 **SIXTH CAUSE OF ACTION**
2 **VIOLATIONS OF 15 U.S.C. §1681 ET SEQ**
3 **(FAIR CREDIT REPORTING ACT)**

4 WHEREFORE, Plaintiffs respectfully pray that judgment be entered
5 against the Defendant for the following:

- 6 A. Actual damages;
7 B. Punitive damages not to exceed \$5,000.00 per violation;
8 C. Costs and reasonable attorney's fees; and
9 D. For such other and further relief as may be just and proper.

10 **TRIAL BY JURY**

11 Pursuant to the seventh amendment to the Constitution of the United States
12 of America, Plaintiffs are entitled to, and demands, a trial by jury.
13

14 Respectfully submitted this 21st of September, 2018
15

16 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
17

18 By: /s/ Todd M. Friedman
19 Todd M. Friedman
20 Law Offices of Todd M. Friedman
21 Attorney for Plaintiffs
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